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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 191

CARL DUNCAN and SUZANNE DUNCAN,

Petitioners,

vs.

DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

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TOPICAL INDEX

	PAGE
Citations to opinions below	1
Jurisdiction	2
Question presented	4
Constitutional provisions and state statutes involved	5
Statement	5
Reasons for granting writ	8
Conclusion	10
Appendices:	
Appendix A. Order discharging petition for writ of habeas corpus	App. p. 1
Appendix B. Amendment XIV, Constitution of the United States	App. p. 2
Appendix C. Article VI, Section 4b, California Constitution	App. p. 3

TABLE OF AUTHORITIES CITED

CASES — PAGE

Begerow, Re, 136 Cal. 293, 68 Pac. 773 8

Collins v. Loisel, 262 U. S. 426, 43 S. Ct. 618, 67 L. Ed. 1062 8

Johnson v. Horton, 152 U. S. 252 8

TEXTBOOKS

25 American Jurisprudence, Sec. 157, p. 252 8

25 American Jurisprudence, Sec. 157, p. 251 9

STATUTES

Penal Code, State of California:

Secs. 1475-1485, incl. 5

Sec. 1494 5

Secs. 1497-1501 5

United States Code, Title 28, Sec. 1257(3) 2

CONSTITUTIONAL PROVISIONS

Constitution, State of California, Art. VI, Sec. 4b 5

Constitution of the United States, Amendment XIV 3, 4, 5, 7, 9, 10

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Petition for a Writ of Certiorari to the Supreme Court of the State of California.

To the Honorable Earl Warren, Chief Justice, and Honorable Associate Justices of the Supreme Court of the United States:

The petition of Carl and Suzanne Duncan, for a writ of certorari, to be directed to the Supreme Court of the State of California, to review a judgment entered April 1, 1959, in favor of respondent herein, and against petitioners herein respectfully show:

Citations to Opinions Below.

The present proceedings grew out of a denial by the Supreme Court of the State of California, for mandamus, to compel the respondent herein to restore the parties to *status quo* upon discharge of a petition for a writ of habeas corpus. The Supreme Court of the State of Cali-

fornia denied the petition for mandamus without opinion, and therefore none can be appended hereto.

The action has its genesis in the habeas corpus proceedings filed in the District Court of Appeal, State of California, Fourth Appellate District, Action No. 1325, entitled, "In the Matter of the Petition of BURRELL H. GARRETT and VIRGINIA A. GARRETT, husband and wife, on behalf of PATRICIA ALYCE GARRETT, also sometimes known as KATHLEEN LUCILLE VAN ORNUM, a minor for a WRIT OF HABEAS CORPUS."

On January 5, 1959, respondent herein, discharged the petition for writ of habeas corpus but refused to return the parties to *status quo*. The respondent court filed its Memorandum of Opinion and which is printed as Appendix A. A search of the reported decisions has failed to disclose that the original proceedings in habeas corpus have been officially reported, and for that reason reference cannot be made to official citations of the decision.

Jurisdiction.

The judgment of the Supreme Court of the State of California was entered April 1, 1959. The jurisdiction of this Court is invoked under Title 28, Section 1257(3), United States Code. The Federal Question was raised before the District Court of Appeal, Petitioner again raised the Federal Question in their petition to the State of California, stating therein:

> "The action of the Respondent Court (District Court of Appeal of the State of California, Fourth Appellate District) on January 5, 1959 involved an interpretation of the California Statutes and constitutional provisions governing habeas corpus proceed-

ings; namely, Article VI, Section 4b, of the Constitution of California, and Sections 1475-1485, inclusive, Section 1494, and Section 1497-1501, inclusive, of Part 2, Chapter 1, of the Penal Code of California, in such manner as to conflict with the due process clause of the 14th Amendment to the United States Constitution."

The Supreme Court of the State of California and respondent herein (the court wherein the case was tried) have violated Article XIV of the Amendments to the Constitution of the United States, affecting the substantial rights of petitioners herein.

Pursuant to the laws of the State of California, respondent herein has original jurisdiction in habeas corpus proceedings; and further, pursuant to the laws of the State of California, appeal does not lie from judgments or orders entered in habeas corpus proceedings. Petitioners contended that respondent sitting as a trial court, exceeded its jurisdiction and abused its discretion when it failed to restore the parties to *status quo* upon discharge of the petition for writ of habeas corpus. Mandamus was the only remedy that would lie to correct the manifest abuses, and by this writ to compel said lower court to enter its order to return the parties to *status quo;* petitioners sought redress in the Supreme Court of the State of California.

The Supreme Court of the State of California is the only appellate court in the State to which application for relief can be made from an adverse decision entered by respondent court; and the said Supreme Court of the State of California is the highest court of law or equity in the State of California from which a final decision could be had in these matters herewith presented.

Question Presented.

An application for writ of habeas corpus was made to the District Court of Appeal, Fourth Appellate District (respondent). Trial was had on the merits and the parties all appeared and were heard in respondent court. Habeas corpus originally issued and the child of the present petitioners was taken from them by the law enforcement authorities under a *criminal warrant*, ordered by respondent court. The Trial Court (respondent) found for the present petitioners, ordered the petition for writ of habeas corpus to be discharged, but failed and refused to return the parties to the *status quo* that existed at the time application for writ of habeas corpus was made. On petition for mandamus to the Supreme Court of the State of California to correct the abuse, the application was denied. There is but one question urged in this application for certiorari:

HAVE PETITIONERS HEREIN BEEN DENIED DUE PROCESS OF LAW AND/OR THE EQUAL PROTECTION OF THE LAW IN CONTRAVENTION OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BY RESPONDENT HEREIN, WHEN IT FAILED TO RETURN OR ORDER THE RETURN OF THE PARTIES TO THE PROCEEDINGS TO THE STATUS QUO THAT EXISTED AT THE TIME THE APPLICATION FOR WRIT OF HABEAS CORPUS WAS ORIGINALLY MADE? ALSO, HAS THE INNOCENT CHILD INVOLVED IN THESE PROCEEDINGS BEEN DENIED HER CONSTITUTIONAL RIGHTS IN DEROGATION OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BY NOT RESTORING HER TO HER PARENTS FROM WHOM SHE WAS TAKEN BY ABUSE OF PROCESS AT THE TIME THE WRIT ISSUED?

Constitutional Provisions and State Statutes Involved.

The Constitutional provision involved is Article 14, of the Amendments to the Constitution of the United States. It is printed in Appendix B, *infra.*

The State statutes involved are Article VI, Section 4b, of the Constitution of California; and Sections 1475-1485, inclusive, Section 1494, and Sections 1497-1501, inclusive, of Part 2, Chapter 1, Penal Code of California. They are printed in Appendix C, *infra.*

Statement.

The aforementioned petition for writ of habeas corpus, was filed in respondent court, by Burrell H. and Virginia A. Garrett, husband and wife, seeking custody of the minor child Patricia, the offspring of petitioners herein. The petition of the Garretts alleged that Patricia was then in the custody of her natural parents (petitioners herein). In response to the filing of the petition for writ of habeas corpus, respondent court upon *ex parte* application, let a *criminal warrant* issue directing that the child Patricia be brought before the respondent court; thus converting a civil action into a criminal action. The *criminal warrant* then resulted in having the Sheriff of Fresno County, California, transmit an *all points bulletin* to be teletyped throughout the State of California, directing that the child Patricia, identified in the said bulletin, *as being two years of age*, be apprehended and arrested, and taken into custody.

The *all points bulletin* resulted in the *arrest* of the child Patricia while in an automobile on a public highway in San Luis Obispo County, California; the detention of Patricia in jail in Paso Robles, California; the forcible

transportation by deputies of the Sheriff of Fresno County, California, in an airplane of the said Sheriff, of Patricia, from San Luis Obispo to Fresno County, California; and the further detention of the child in Fresno County Juvenile Hall.

The child Patricia was, pursuant to the aforementioned process, brought before respondent court. The Court then entered a minute order directing that the child Patricia be delivered into the custody of the Garretts, pending further proceedings.

Thereafter, on January 5, 1959, a trial was held in respondent court wherein all interested parties appeared and were heard. The Trial Court entered its judgment, and ordered:

(a) That the minute order which gave custody of the child to the Garretts pending a hearing on the merits, *be set aside;*

(b) That the petition for writ of habeas corpus be dismissed; *and that the writ be discharged.* (See, Appendix A.)

The foregoing orders, to the contrary notwithstanding, respondent court failed to restore the parties to their respective positions which existed prior to the intervention of respondent court by process and order which effected the transfer of custody of Patricia from her *natural parents* to the Garretts.

All of the aforementioned facts were set forth in the petition for writ of mandamus with the Supreme Court of the State of California. *None of these facts were refuted by either the respondent court or the Garretts.*

The petition for writ of mandamus was filed in the Supreme Court of the State of California seeking to

compel the respondent court to enter an order restoring the parties to the *status quo* that existed at the time the application for said writ of habeas corpus was made. Petitioners alleged that this would be consistent with the orders setting aside the minute order granting *temporary custody* to the Garretts, *and discharging the writ;* and consistent with due process of law and the equal protection of the law as expressed in the 14th Amendment to the Constitution of the United States.

On April 1, 1959, the Supreme Court of the State of California denied the petition for a writ of mandamus, in effect holding: that the parties should not be restored to the *status quo* that existed at the time application for a writ of habeas corpus was made; and that, petitioners or the child Patricia, neither one of them, have been denied due process of law and/or the equal protection of the law in contravention of the 14th Amendment to the Constitution of the United States.

It is urged and contended by petitioners herein, that, when the respondent court refused to restore the parties to the *status quo* that existed at the time application for a writ of habeas corpus was made, upon dismissal of the said petition for said writ of habeas corpus, and upon discharge of the said writ, petitioners were denied due process of law and/or the equal protection of the law in derogation of the 14th Amendment to the Constitution of the United States; and that the decision by the Supreme Court of the State of California, by having denied the petition for mandamus, continues to deny petitioners herein due process of law and the equal protection of the law in contravention of the 14th Amendment to the Constitution of the United States.

Reasons for Granting Writ.

The Supreme Court of the State of California has decided a Federal Question of substance in a way probably not accord with the applicable decisions of this Honorable Court.

Under the authority of *Collins v. Loisel*, 262 U. S. 426, 67 L. Ed. 1062, 43 S. Ct. 618, it appears that, it is the well-established rule, that discharge upon habeas corpus operates as a bar and estoppel as to the particular proceeding or process under review and is *res judicata* upon the same questions presented under the same state of facts. To the same effect see, *re Begerow*, 136 Cal. 293, 68 Pac. 773. Under the authority of *Johnson v. Horton*, 152 U. S. 252, 257, this Honorable Court has held that the peace and order of society demand adherence to the doctrine of *res judicata*.

In 25 Am. Jur. Section 157, page 252, it is stated:

> "Ordinarily, an order or judgment in a habeas corpus proceeding is res judicata as to the person charged with unlawfully restraining another of his liberty, until reversed in some proper proceeding, and if one arrested under a body execution is discharged on habeas corpus proceedings at which his adversary appears and is heard, the adjudication therein is conclusive in a subsequent action for false imprisonment."

It would therefore appear that, if a person has been discharged from custody of the persons who illegally detain him, an order from the same court should automatically be entered which would free the person from the illegal restraint and compel a return to the *status quo*. Otherwise, the discharge of the illegally restrained person

is a nullity if he is permitted to remain in the custody of the persons illegally detaining him. Additionally, it is stated in 25 Am. Jur. Section 157, page 251:

> "With regard to the effect of the discharge of a petitioner on habeas corpus, it has frequently been held that such discharge by a court of competent jurisdiction conclusively settles that he is not liable to be held in custody upon the state of facts existing at the time."

The District Court of Appeal, State of California, Fourth Appellate District, respondent herein, by ordering that the original petition for habeas corpus be dismissed, the writ discharged, and the temporary order of custody pending a hearing set aside, *was under a constitutional duty and mandate* to restore the parties to the habeas corpus proceedings to their respective positions which existed prior to the intervention of the respondent court by process and order effecting a transfer of custody of the child Patricia. In this respect, the respondent court has clearly denied due process of law and/or the equal protection of the law to petitioners herein, affecting their substantial rights, in derogation of the 14th Amendment to the Constitution of the United States.

Settlement of the question is clearly important and in the public interest. The situation created by the courts below should be corrected; the parties should be ordered to return to the *status quo* that existed at the time the application for writ of habeas corpus was originally made. Otherwise, discharge of a writ of habeas corpus is meaningless in the State of California, persons can then continue to be held in illegal restraint after discharge, be denied due process of law and the equal protection of the

law in derogation of the 14th Amendment to the Constitution of the United States; and state courts may, by issuance of process, deprive persons of their liberty, then dismiss the case and completely ignore what they did initally. The issue is of importance to all the courts of our Nation. It is vital to due process of law and the equal protection of the law. These issues were properly raised both in the Trial Court and in the Supreme Court of the State of California. Indeed, resolution of such an important question ought to and should be resolved by this Honorable Court.

Conclusion.

The doctrine of *res judicata* and adherence to the 14th Amendment to the Constitution of the United States compels the conclusion that this Honorable Court grant its writ of certiorari to be directed to the Supreme Court of the State of California.

Respectfully submitted,

MORTON GALANE,

Attorney for Petitioners, Carl and Suzanne Duncan.

APPENDIX A.

In the District Court of Appeal, Fourth Appellate District, State of California in the Matter of the Petition of Burrell H. Garrett and Virginia A. Garrett, husband and wife, on behalf of Patricia Alyce Garrett, also sometimes known as Kathleen Lucille Van Ornum, a minor, for a Writ of Habeas Corpus. Crim. No. 1325.

BY THE COURT

The petition of Burrell H. Garrett and Virginia A. Garrett, husband and wife, on behalf of Patricia Alyce Garrett, also sometimes known as Kathleen Lucille Van Ornum, a minor, for writ of habeas corpus and motion to set aside minute order in re custody, and petitioners' motion to dismiss the petition came on regularly for hearing on December 11, 1958.

Good cause appearing therefor, it is ordered that the petition for writ of habeas corpus be discharged. The previous minute order *in re* custody is set aside. The petitioners' motion to dismiss the petition for writ of habeas corpus is granted and the writ discharged. The matter of future custody of said minor child appears to be presently before the Superior Court of San Diego County in guardianship proceedings pending therein.

Dated January 5, 1959.

MUSSELL,

Acting P. J.

APPENDIX B.

Amendment XIV, Constitution of the United States.

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C.

Article VI, Section 4b, California Constitution.

". . . . . .

"The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the Supreme Court which shall be ordered by the Supreme Court to be transferred to a District Court of Appeal for hearing and decision. The said courts shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the District Court of Appeal of his district, or before any superior court within his district, or before any judge thereof."